

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.53, the Professional Licensure Division hereby gives Notice of Intended Action to amend Chapter 4, "Board Administrative Processes," Iowa Administrative Code.

The proposed amendments to Chapter 4 remove the requirement that a board elect a secretary and replace the rule that pertains to physical, mental, and clinical competency examinations and alcohol or drug screenings. These amendments are proposed in order to ensure that the rules are consistent with statute.

Any interested person may make written comments on the proposed amendments no later than October 14, 2008, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on October 14, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. It is requested, though not required, that oral presentations also be shared in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 4.3(2) as follows:

4.3(2) Each board shall elect a chairperson, and vice chairperson, ~~and secretary~~ from its membership at the first meeting after April 30 of each year.

ITEM 2. Rescind rule 645—4.15(272C) and adopt the following **new** rule in lieu thereof:

645—4.15(147,272C) Order for physical, mental, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a physical, mental, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

4.15(1) Content of order. A board order for a physical, mental, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

4.15(2) *Alternatives.* Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

4.15(3) *Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. A licensee who fails to timely file a request for hearing to object to an examination order waives any future objection to the examination order in the event formal disciplinary charges are filed for failure to comply with the examination order or on any other grounds. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

4.15(4) *Closed hearing.* Any hearing on an objection to the examination order shall be closed pursuant to Iowa Code section 272C.6(1).

4.15(5) *Order and reports confidential.* An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4). However, all investigative information regarding the examination order shall be provided to the licensee in the event the licensee files an objection, under 4.15(3), in order to allow the licensee an opportunity to prepare for hearing.

4.15(6) *Admissibility.* In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

4.15(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.